



SENATE JUDICIARY
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SB 308

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SB 308 Criminalize Refusal

When I became a MADD volunteer I was offered several different activities. My trainer recommended that I start with court monitoring to learn more about the current processes for DUI enforcement and adjudication in Montana. I sat in court nearly every Thursday for the last 18 months and read hundreds of public documents. I appreciate the wonderful cooperation and support I received from law enforcement, prosecutors, and courts in the Flathead. Over and over I heard that the biggest problem with the DUI statutes is the ability for an impaired driver to refuse to provide a specimen.

I have looked at over 1000 DUI cases. I was impressed by how many people arrested for DUI refused to cooperate with field sobriety testing, drug recognition expert evaluations, breath alcohol testing, and request for blood testing. 38% of those arrested for DUI 1 refused testing; 50% of DUI2, 52% of DUI3, and 61% of Felony DUIs. In the Flathead only 68% of offenders who refused testing were convicted of an alcohol related offense; in contrast 75% of offenders who provided a specimen were convicted of an alcohol related offense.

Our public safety officers stop impaired drivers to save lives! Too often they are too late and have to clean up the human tragedy after a crash. They need to collect evidence for our justice system to work properly. The offenders need significant consequences to stop them from driving impaired again.

DUI arrests prevent dangerous driving behaviors. I read a chilling report recently describing a drunk driver going north in the southbound lane of highway 93 where Trooper Michael Haynes was killed. The new trooper had to drive off the road to avoid a head on collision. Three months later that same driver crashed while driving drunk—DUI #3. Another driver was arrested for her 2nd DUI when she crashed in May, then crashed drunk in July, this time nearly killing her passenger. In my study less than 17% of drivers arrested for DUI were stopped for a safety problem such as a headlight out; the other 83% were seriously threatening the public: 29% were in crashes, most of which involved vehicle damage and many which caused injuries and death. 44% were near collisions, failure to yield, crossing the center line, and speeding. 10% were stopped after frightened calls to 911, "this driver is going to kill someone."

The DUI statute is a gross contradiction:

61-8-402 (1) "A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body."

61-8-402 (4) "If an arrested person refuses to submit to one or more tests requested and designated by the officer...the refused test or tests may not be given"

Driving on your private land is your right, driving on a public highway is a privilege. One of your responsibilities is to provide biologic evidence when there is probable cause that you may be endangering the public. I have the right to safe highways—I have the right for my son to be alive. Your job as senators is to pass laws to keep the public safe.

This law will save lives!